



Date Issued: August 17, 1998
Case No.: 97-INA-284

In the Matter of:

RICHARD E. GELB,
Employer,

on behalf of

NATIVIDAD JIMENEZ,
Alien.

Appearances: Dan E. Korenberg, Esq.,
for Employer and Alien

Before: Burke, Guill and Vittone
Administrative Law Judges

DECISION AND ORDER

PER CURIAM. Employer above, a private householder, requests review of a denial of its application for alien labor certification by a U.S. Department of Labor Certifying Officer ("CO") for the position of Domestic Cook.¹

The job opportunity, as stated by Employer, required two years of experience. Employee would work 40 hours per week and the rate of pay is \$12.16 per hour plus time and a half for overtime. The job duties were described by Employer as follows:

Plan menus, cook, bake and serve meals in private home for family members and guests. Plan and prepare weekly menu for employer's approval as per employer's requirements and guest lists. Prepare low sodium, low-fat, non-cholesterol, nutritionally balanced vegetarian meals and fancy foods, decorated according to occasion. Estimate consumption and order food stuff and supplies. Bake breads, pastries, pies & desserts. Prepare soybean meats, grain meats & vegetables on daily basis. Decorate foods and party trays. Set table & serve foods & refreshments. Maintain kitchen and storage areas clean & hygienic. Wash dishes, pots, pans & utensils.

¹Alien labor certification is governed by the Immigration and Nationality Act, 8 U.S.C. § 1182(a)(5)(A) and the implementing regulations at 20 C.F.R. Part 656.

(AF 168).

Employer required that applicants have a high school education and two years of experience in the job offered. Employer also required experience in preparation of low sodium, non- cholesterol, low fat dietary food & vegetable dishes & Filipino & Chinese cuisine. The cook's work schedule is Thursday thru Monday 8AM until noon and 5PM until 9PM. (AF 168).

In the Notice of Finding ("NOF") the CO proposed to deny the application, *inter alia*, because it did not appear that Employer had the means to hire a full-time cook at the offered wage of \$12.16 per hour. Thus there was no bona fide job opportunity in violation of 20 C.F.R. 656.20 (c)(8). (AF 160-166). Consequently, the CO requested the submission of evidence showing that Employer's income is sufficient to pay the offered wage of \$25,292.80 per year. The CO instructed that this evidence may take the form of recent tax return information and Form W-2 or 1099 reports of income.

In response to the CO's question about Employer's ability to pay, Employer provided a letter from his accountant. This letter stated, "I have been [Employer's] accountant for the last 14 years. His income for the 1996 calendar year is estimated to be in excess of \$100,000." (AF 149). The CO did not accept this rebuttal, (AF 134-136), and denied Employer's application for alien labor certification.

Subsequently, administrative-judicial review was requested and the file was referred to the Board of Alien Labor Certification Appeals. Employer requests that the Final Determination (FD) be reversed. (AF 2-133).

DISCUSSION

Section 656.20 (c)(1) requires that the applications for alien labor certification must clearly show that Employer has adequate funds available to pay the wage or salary offered to the alien. In the NOF the CO requested that Employer submit a certified financial statement, Form(s) W-2 or 1099 Reports of income for Employer(s), or Employer(s)' most recent income tax return. Employer merely submitted a letter from his accountant stating that his income for the year 1996 is estimated to exceed \$100,000.

The CO is not required to accept written statements provided in lieu of independent documentation as credible or true, but must consider them and give them the weight they rationally deserve. **Gencorp**, 87-INA-659 (Jan 13, 1988) (*en banc*). Though the letter from Employer's accountant may be accepted as credible, it is not as comprehensive as the specific documentation which the CO requested and does not indicate Employer's ability to pay the wage offered. The statement from Employer's accountant does not evidence his ability to pay. A mere statement of estimated income does not illustrate Employer's true financial situation after taxes, mortgages, debts, or other required expenditures. In the absence of evidence to show that Employer is capable of providing the salary for the alien worker for which certification is now sought, we find that the CO was correct in denying the application for labor certification.

ORDER

The CO's denial of the application for labor certification is hereby **AFFIRMED**.

SO ORDERED.

Entered at the direction of the panel by:

Todd R. Smyth
Secretary to the Board of
Alien Labor Certification Appeals

NOTICE OF OPPORTUNITY TO PETITION FOR REVIEW: This Decision and Order will become the final decision of the Secretary unless within twenty days from the date of service a party petitions for review by the full Board. Such review is not favored and ordinarily will not be granted except (1) when full Board consideration is necessary to secure or maintain uniformity of its decisions, or (2) when the proceeding involves a question of exceptional importance. Petitions must be filed with:

Chief Docket Clerk
Office of Administrative Law Judges
Board of Alien Labor Certification Appeals
800 K Street, N.W.
Suite 400
Washington, D.C. 20001-8002

Copies of the petition must also be served on other parties and should be accompanied by a written statement setting forth the date and manner of service. The petition shall specify the basis for requesting full Board review with supporting authority, if any, and shall not exceed five double-spaced pages. Responses, if any, shall be filed within ten days of service of the petition, and shall not exceed five double-spaced pages. Upon the granting of a petition the Board may order briefs.